



FAMILY MEDICAL LEAVE

For Employees of Indiana State Government

Family-Medical Leave Dictionary

Revised March 2015

1250 hours of work means actual work hours and does not include holidays, time spent in paid or unpaid leave, vacation leave, sick leave, or personal leave, compensatory time off, time spent receiving benefits under the State's Short/Long Term Disability Plan or time during the elimination period prior to receiving benefits under the Disability Plan. In determining whether a veteran meets this requirement, the hours that were actually worked for the state should be combined with the hours that would have been worked during the twelve months prior to the start of family-medical leave but for the military service.

Adoption means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child is not a factor in determining eligibility for family-medical leave.

Use of the term **Birth** means that the employee is seeking parenting leave for his/her newborn, biological child. Leave to care for an employee's spouse during pregnancy, childbirth, and/or recovery therefrom is covered under Leave for Serious Health Condition of Spouse, Child, or Parent.

Aggregate twelve (12) months service means consecutive or non-consecutive employment in agency(s) subject to the executive authority of the Governor for a combined total of twelve (12) months. Non-consecutive service prior to a break in service of seven (7) years or more is not counted in this calculation unless the break was occasioned by the fulfillment of the employee's National Guard or Reserve military service obligation. In determining whether a veteran meets this requirement, the months employed by the state should be combined with the months that would have been worked but for the military service.

Allotment of family-medical leave means

- a. 12 workweeks in a 12-month period for the following qualifying events: (1) birth of the employee's child and to care for the newborn; (2) placement with the employee of a child by adoption or foster care and to care for the newly-placed child; (3) to care for the employee's spouse, child, or parent with a serious health condition; (4) because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his/her job; and (5) because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty or call to active duty status in support of a contingency operation. OR

- b. 26 workweeks in a single 12-month period) to care for a covered servicemember with a serious injury or illness incurred in the line of duty on active duty.
- c. Under no circumstances can the amount of leave taken during a 12-month period exceed 26 workweeks, and that is possible only if one of the reasons for leave is to care for a covered servicemember. Any combination of reasons for leave #1-5 above is limited to a maximum total of 12 workweeks in the State's chosen 12-month period of the fiscal year (July 1 – June 30). Additional limitations can be found in this policy under Leave to Care for Serious Health Condition of Spouse, Child, or Parent, Leave for Newborn, Adopted, or Foster Child(ren), and Leave to Care for Covered Servicemember.

Amount of leave available to care for a covered servicemember is a maximum of 26 workweeks in a single 12 month period. Any unused portion of servicemember caregiver leave is forfeited; it cannot be used to extend leave for other FMLA-qualifying reasons. Servicemember caregiver leave is applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that not more than 26 workweeks of leave may be taken within any single 12-month period. Should periods of servicemember caregiver leave overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

Applicable time period means the fiscal year (July 1 through June 30) for purposes of leaves for the serious health condition of the employee, spouse, child, or parent or because of a qualifying exigency; the single 12-month period beginning on the first day of leave to care for a covered servicemember; and/or the 12-month period beginning with the birth or placement of a child.

Child means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee has day-to-day responsibility for care and financial support, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability." "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.



Child (of the covered servicemember for purposes of the qualifying exigency for child care and school activities) means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the covered military member has day-to-day responsibility for care and financial support, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

1. "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.
2. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

Child (of the covered servicemember for purposes of whether an employee qualifies to take family-medical leave for a qualifying exigency) means the employee requesting leave is the biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and may be of any age.

Child on covered active duty means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status in the National Guard or Reserves and who is of any age.

Covered active duty or call to covered active duty status means

- A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- B) in the case of a member of a reserve component of the Armed Forces or National Guard unit, duty during the deployment of the member with the Armed Forces to a foreign country under call or order to active duty under a provision of law referred to in Title 10, United States Code.

Covered military member means the employee's spouse, child, or parent on covered active duty under a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States.

Covered servicemember with a serious injury or illness means

- A) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or otherwise on the temporary disability retired list for a serious injury or illness; or
- B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) or was discharged or released under conditions other than dishonorable at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
 - a. The applicable five (5) year period is calculated backward from the date the eligible employee first takes family-medical leave to care for the covered veteran except that the



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period from October 28, 2009 to March 8, 2013 must be excluded from the calculation for any veteran discharged or released prior to March 8, 2013.

- b. The single 12-month period for leave to provide care may extend beyond the end of the applicable five (5) year period if it does, in fact, begin during that period.

Chronic condition - requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider; Continues over an extended period of time (including recurring episodes of a single underlying condition); and May cause episodic rather than a continuing period of incapacity (asthma, diabetes, epilepsy, etc.)

Documentation of birth or placement of child means a birth certificate, adoption papers, authorization to provide foster care as well as documentation of each foster care placement which must indicate that the employee is the biological, adoptive, or foster parent for a particular child and the date of the birth or on which such placement is effective. Leave needed for participation in meetings, counseling and other events related to prenatal, pre-adoption, or foster care certification purposes also qualify for FML coverage and documentation of those dates/times is required to support the leave request.

Documentation for purposes of confirming family relationship means the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, or a court document. The employer is entitled to examine documentation such as a birth certificate, but the employee is entitled to the return of the official document submitted for this purpose.

Documentation of qualifying exigency means that the first time an employee requests leave because of a qualifying exigency arising out of the covered active duty of a covered military member the employee must submit a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty. Additional documentation can be required for subsequent covered active duty calls. Further, the employee requesting leave because of a qualifying exigency must complete the appropriate forms regarding dates and duration of leave, identifying the events which support the need for leave and providing contact information for any third party with whom the employee is meeting with a brief description of the purpose of the meeting. Examples of documentation include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for the handling of legal or financial affairs. If the qualifying exigency involves Rest and Recuperation (R&R) leave, documentation is a copy of the military member's R&R orders or other documentation issued by the military which indicates the military member has been granted R&R, and the dates of his/her R&R leave.

Documentation for a serious health condition means a completed Certification of Health Care Provider form or other document containing sufficient information to determine whether a serious health condition exists. Providing such documentation is the responsibility of the employee.



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Documentation of serious injury or illness of covered servicemember means

- A certification completed by the following health care providers: (1) a US Department of Defense (DOD) health care provider; (2) a US Department of Veterans' Affairs (VA) health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider and containing sufficient information to determine whether a serious injury or illness exists. Second and third opinions and recertifications are not permitted for FMLA leave to care for a covered servicemember whose certification was completed by one of these four providers.
- A certification completed by a health care provider described in 29 CFR 825.125 (see list in Definitions for Serious Health Condition of Employee). Second and third opinions and recertification are permitted when the certification was completed by a health care provider who is not affiliated with the military.
- Documentation of the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless whether the employee is the named caregiver in the enrollment documentation.
- See also Invitational Travel Orders or Authorization defined below.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the U.S. including international waters.

Employee means a person who has been employed in agency(s) subject to the executive authority of the Governor for an aggregate twelve (12) months service and who have performed at least 1250 hours of work in such agency(s) during the twelve (12)-month period immediately preceding the need for family-medical leave.

Employer means the appointing authority or designee of the agency employing the employee at the time leave under this policy is taken.

Fiscal Year means the twelve-month period beginning July 1 and ending June 30.

Foster Care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home or pursuant to a judicial determination of the necessity for foster care and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health care provider means one of the following persons who may complete a Certification for Health Care Provider form and certify a serious health condition:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices.
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as



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demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law.

- Nurse practitioners, nurse-midwives, clinical social workers, and physician's assistants authorized to practice under State law and performing within the scope of their practice as defined under State law.
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- Any health care provider recognized by the employer or the employer's group health plan's benefit manager.
- A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

in loco parentis means those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, the persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Incapable of self-care - the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living (ADLs)" or "instrumental activities of daily living (IADLs)". ADLs include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. IADLs include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Inpatient care - an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom), or any subsequent treatment in connection with such inpatient care.

Intermittent leave - leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Invitational Travel Orders (ITO) or Invitational Travel Authorization (ITA) means a document issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification of a serious injury or illness of a covered servicemember for the duration of time specified in the ITO or ITA regardless of whether the employee is named in the order or authorization. Second and third opinions and recertifications are not permitted during the time period covered by the ITO or ITA. Requests for additional leave other than the time period specified in the ITO/ITA require additional documentation as defined above at Documentation of serious injury or illness of covered servicemember.



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Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, child, or parent in the following order of priority: (1) blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, (2) brothers and sisters, (3) grandparents, (4) aunts and uncles, and (4) first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purpose of military caregiver leave under the FMLA. When such designation has been made, the designated individual shall be deemed to be the servicemember's only next of kin. However, if no such designation has been made by the covered servicemember and there are multiple family members at the same level of relationship to the covered servicemember, all shall be considered to be his/her next of kin and may take FMLA leave to provide care to the covered servicemember either consecutively or simultaneously.

Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent means a biological, adoptive, or foster parent or an individual who had day-to-day responsibility for care and support of the employee when the employee was a child as defined above. In-laws do not qualify.

Parent of a covered service member means a covered servicemember's biological, adoptive, step, or foster parent, or any other individual who stood *in loco parentis* to the covered servicemember. In-laws do not qualify.

Reduced leave schedule - a leave schedule that reduces the usual number of hours per work week, or hours per work day, of an employee.

Qualifying exigency means that the employee who is a spouse, child, or parent of a covered military member requires leave for one or more of the following events: (1) short-notice deployment; (2) military events and related activities; (3) child care and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; (8) parental care; and (9) additional military activities provided the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Continuing Treatment

A period of incapacity of more than three consecutive calendar days that also involves in-



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person treatment by a health care provider on at least one occasion within seven (7) days of the beginning of the incapacity which results in a regimen of continuing treatment under the supervision of the health care provider involving either (a) additional visit(s) required by the health care provider within thirty (30) days of the beginning of the incapacity; or (b) the prescription of medications, therapy requiring special equipment, or other treatment that can only be initiated on orders of a health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- a. Requires at least two (2) visits annually for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
- b. Continues over an extended period of time (including recurring episodes of a single underlying condition).
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any absences to receive multiple treatments for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive days if not treated, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), and kidney disease (dialysis).

Serious injury or illness

- A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves) means an injury or illness that was incurred by a covered servicemember in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; and
- B) in the case of a veteran, means a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran *and* is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; *or*
 - b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; *or*



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- c. A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; *or*
- d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Single 12-month period to care for a covered servicemember means the period beginning on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date without regard to the fiscal year used by the State to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons.

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. (rev 2015-Mar)

Veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released therefrom under conditions other than dishonorable (as defined in 39 USC Sec. 101) at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.



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